



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5430
Facsimile: (202) 418-5536

DIVISION OF
TRADING & MARKETS

COMMODITY FUTURES
TRADING COMMISSION
RECEIVED FOR
PUBLIC RECORD
JUL 24 8 37 AM '96

June 26, 1996

Re: Request to Treat Family Trusts as Qualified Eligible Participants under Rule 4.7

Dear :

This is in response to your letter dated May 23, 1996, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), by which you request relief from the qualified eligible participant ("QEP") criteria of Rule 4.7(a)(1)(ii)^{1/} on behalf of "X", a registered commodity pool operator ("CPO"), with respect to ("the Fund"), an "exempt pool" under Rule 4.7.^{2/} "X" is a wholly-owned subsidiary of "Y".

Based upon the representations contained in your letter, we understand the relevant facts to be as follows. The Fund is offered only to certain managing group members and key employees of "Y", each of whom is a QEP ("Eligible Employee"). "X" requests that:

interests in the Fund be permitted to be transferred to a trust, other entity or custodial account established for estate or investment planning purposes [by an Eligible Employee participant in the Fund] that has as its sole beneficiaries (or beneficial owners, in the case of an entity) [the Eligible Employee] and/or his or her spouse or any of his or her immediate family [a "Family Trust"] notwithstanding that such trust, or other entity, does not have \$5 million in

^{1/} Commission rules referred to herein are found at 17 C.F.R. Ch. I (1995), as amended by 60 Fed. Reg. 38,146 (July 25, 1995).

^{2/} Pursuant to a Notice of Claim for Exemption under Rule 4.7, filed on June 15, 1994 on behalf of the Fund, interests in the Fund may only be sold to QEPs.

assets and/or does not meet the portfolio requirements of Rule 4.7(a)(1)(ii)(B)(1).

The investment decisions on behalf of each Family Trust will be made by the Eligible Employee who has established it, and each Family Trust will consent to being treated as a QEP.

Based upon your representations, it appears that granting the requested relief would not be contrary to the public interest and the purposes of Rule 4.7. Accordingly, the Division will not recommend that the Commission take any enforcement action against "X" for failure to comply with Rule 4.7(a) if it continues to claim relief pursuant to Rule 4.7 with respect to the Fund, notwithstanding investments by the Family Trusts in the Fund and their treatment as QEPs.

We note that this letter relieves "X" solely from compliance with certain requirements of Rule 4.7 and does not excuse it from compliance with any other applicable requirements contained in the Commodity Exchange Act ("Act")^{3/} or the Commission's regulations issued thereunder. For example, it remains subject to the antifraud provisions of Section 40 of the Act,^{4/} the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations, and all other applicable requirements of Part 4. Further, this letter is applicable to "X" solely in connection with its operation of the Fund.

This letter is based upon the representations you have made to us. Any different, changed or omitted facts or circumstances might require us to reach a different conclusion. In this regard, we request that you notify us immediately in the event that the operations or activities of the Fund, including the composition of its investors, change in any way from those as represented to us. This letter represents the position of the Division only. It does not necessarily represent the views of the Commission.

If you have any questions concerning this correspondence please contact me or Barbara S. Gold, Assistant Chief Counsel, at (202) 418-5450.

Very truly yours,

Susan C. Ervin
Chief Counsel

^{3/} 7 U.S.C. §1 et seq. (1994).

^{4/} 7 U.S.C. §60 (1994).